

IN THE MATTER OF LICENSE NO. 327773 MERCHANT MARINER'S DOCUMENT
AND ALL OTHER SEAMAN'S DOCUMENTS NO. Z-275820-D2

Issued to: Theodore LEE, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1791

Theodore LEE, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 5 November 1968, an Examiner of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for six months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Chief Engineer on board SS OVERSEAS PROGRESS under authority of the document and license above captioned, on or about 29 October 1968, Appellant assaulted and battered with his hand one Ralph Wilcox, a member of the crew.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of several witnesses.

In defense, Appellant offered in evidence his own testimony and that of his local union representative in Houston.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specification had been proved. The examiner then entered an order suspending all documents issued to Appellant for a period of six months outright plus six months on twelve months' probation.

The entire decision was served on 3 June 1969. Appeal was timely filed on 5 June 1969 and perfected on 3 November 1969.

FINDINGS OF FACT

On 29 October 1968, Appellant was serving as Chief Engineer on board SS OVERSEAS PROGRESS an acting under authority of his license

and document while the ship was in the port of Houston, Texas.

Wilcox, an unlicensed member of the engine department, filed a claim for overtime at payoff on the date in question. Appellant was summoned to the master's office because there was a dispute about the claim.

In the discussion, Wilcox called Appellant a liar. Appellant struck Wilcox in the mouth with the back of his hand.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that provocation justified the striking and that Appellant's act was not deliberate but purely reactive.

It is also contended that even if assault and battery was properly found proved, the order is excessive in view of Appellant's long years of service.

APPEARANCE: (on appeal only) Kierr and Gainsburgh, New Orleans, Louisiana, by Robert J. David, Esquire

OPINION

I

There is no factual issue in this case at all. Appellant testified before the Examiner: "He up and called me a 'God-damned liar' and when he did that, I back-handed him in the mouth."

Even if it is accepted that Wilcox used the expression testified to by Appellant rather than the somewhat milder "liar" as found by the Examiner, the principle is the same. Mere words do not justify an assault and battery. See Decisions on Appeal Nos. 1549 and 1724.

Nor is it a defense that one reacted to words instinctively rather than with deliberation and specific intent. Short of the classic defense of insanity, one cannot be heard to urge his individual reactions to justify anti-social conduct. When Appellant argues that he did only what the ordinary reasonable man would have done in the same circumstances, what he actually says is that he did what the average man is tempted to do, or would like to do, under such circumstances. The law has set the standard for the rational man. When he resorts to personal violence in response to words he places himself in the wrong.

II

As to the severity of the order, reference is made to the Table of Average Orders, at 46 CFR 137.20-165. Assault and battery is listed as a matter for which time between offenses is immaterial. The order for the first offense is a six month suspension. The order for a second offense is revocation.

Appellant's record shows that on 29 October 1964 he was admonished for assaulting and battering a member of the crew with his fist. The action there, under the standards of the Table, was lenient.

Here, four years later, we find another offense of assault and battery by a chief engineer on a member of his crew. Again, under the Table, the order is more lenient than Appellant could hope for.

The Examiner had all the facts, including evidence of provocation and including Appellant's years of service and prior record, before him. It cannot be said that the order is too severe as a matter of law, and under the regulation there appears no reason to disturb it.

ORDER

The order of the Examiner dated at Houston, Texas, on 5 November 1968, is AFFIRMED.

C.R. BENDER
Admiral, United State Coast Guard
Commandant

Signed at Washington, D. C., this 22 day of June 1970.

INDEX

Assault (including battery)

- Provocation,, verbal
- Verbal abuse as provocation
- By ship's officer

Defenses

- Assault, instinctive reaction
- Assault, verbal abuse
- Verbal provocation

Order of Examiner

- Not excessive when more lenient than average orders